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7  
8 **UNITED STATES BANKRUPTCY COURT**  
9 **DISTRICT OF ARIZONA**

10 In re:

11 TEXAS HILL ENTERPRISES, GP, an  
12 Arizona general partnership,

13 Debtor.

Chapter 11

Case No. 0:10-bk-11121-JMM

Case No. 0:10-bk-11126-JMM

(Motion for Joint Administration Pending)

14 In re:

15 TEXAS HILL DIAMANTE COOLING,  
16 L.L.C an Arizona limited liability company

17 Debtor.

**DEBTORS' MOTION TO  
OBTAIN CREDIT PURSUANT TO  
11 U.S.C. § 364**

18  
19 Pursuant to 11 U.S.C. § 364, the debtors-in-possession, Texas Hill Enterprises, GP  
20 ("THE") and Texas Hill Diamante Cooling, L.L.C., ("THDC") (collectively the "Debtors"),  
21 submit their motion to obtain post-petition super-priority secured credit in the amount of  
22 \$200,000.00 from Kristi L. Ricard ("Ms Ricard") and unsecured credit of \$150,000 from  
23 Forest A. Braden ("Mr. Braden") ("Motion"). The post-petition financing agreements are  
24 currently being drafted and shall be filed shortly hereafter. This Motion is supported by the  
25 accompanying Memorandum of Points and Authorities and the entire record before the Court,  
26 which are incorporated herein by this reference.

1                                    **MEMORANDUM OF POINTS AND AUTHORITIES**

2    **A.    Background.**

3            1.        This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157  
4    and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(D). Venue is  
5    proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for  
6    the relief requested in the Motion is 11 U.S.C. § 364.

7            2.        On April 15, 2010, the Debtors each filed voluntary petitions for relief under  
8    chapter 11 of the United States Bankruptcy Code ("Petition Date"). The Debtors are debtors-  
9    in-possession, pursuant to 11 U.S.C. §§ 1107(a) and 1108. No trustee or official committee  
10   has been appointed in this case.

11   **B.    Property of the Debtors.**

12           3.        The Debtors collectively own and operate the Texas Hill Farm ("Farm")  
13   spanning 5,200 acres in Yuma County, Arizona. Approximately 3,999 acres of the 5,200 acres  
14   of the Farm are leased by the Debtors from other entities.

15           4.        The Farm grows various crops including but not limited to alfalfa, lettuce, hay,  
16   rye, wheat, cantaloupes, Bermuda seed, Sudan seed, and cotton.

17           5.        Upon information and belief, Farm Credit, Rabobank AgFinance, and Rabobank  
18   N.A. (collectively "Secured Creditors") may claim liens on the Debtors' assets in the  
19   approximate amounts of \$5,021,546, \$2,100,00, and \$3,962,000 respectively. The Debtors'  
20   proposed counsel has not had sufficient time to determine the validity, priority, enforceability,  
21   and/or extent of the claimed liens. In addition, a formal creditors committee is yet to be  
22   formed.

23   **C.    Immediate Obligations of the Debtor.**

24           6.        The Debtors have certain lease agreements and chemical, fertilizer, and payroll  
25   expenses which require immediate payment ("Expenses"). If the Expenses are not paid timely  
26   the Farm will default on the lease agreement losing the leased land, the crop, and any proceeds

1 from the crop subject to the lease agreement. Further, if the Expenses are not paid the Farm  
2 will subject the land and crops to irreparable harm.

3 **D. Proposed Post-Petition Financing.**

4 7. Over the next two months, the projected monthly revenues generated by the  
5 Debtors cannot cover the Expenses.

6 8. The Debtors have received an offer from Ms. Ricard to open a \$200,000 line of  
7 credit for THE, to mature on July 15, 2010. Interest will accrue at a rate of 10% per annum. In  
8 exchange for the extension of credit Ms. Ricard shall be granted an administrative priority  
9 pursuant to 11 U.S.C. §§ 364 and 503(b)(1) and given a super-priority lien on all existing crops  
10 pursuant to 11 U.S.C. § 364(d)(1)(B).

11 9. The Debtors also have received an offer from Mr. Braden to lend THE \$150,000,  
12 which loan is to be repaid by July 15, 2010. Interest will accrue at a rate of 10% per annum.  
13 In exchange, for the loan Mr. Braden shall be granted an administrative priority pursuant to 11  
14 U.S.C. §§ 364 and 503(b)(1).

15 **POINT ONE**

16 **The Court Should Approve the Post-Petition Loan**

17 **(11 U.S.C. § 364)**

18 Pursuant to 11 U.S.C. § 364(b), “the court, after notice and a hearing, may authorize the  
19 trustee to obtain unsecured credit or incur unsecured debt other than under subsection (a) of  
20 this section, allowable under section 503(b)(1) of this title as an administrative expense.”

21 Further, pursuant to 11 U.S.C. § 364(d)(1), “the court after notice and a hearing, may  
22 authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on  
23 property of the estate that is subject to a lien...”

24 In this case, the Debtors have found interested lenders willing to provide post-petition  
25 financing in the aggregate amount of \$350,000 to the Debtors in exchange for priority as an  
26 administrative expense and, in the case of Ms. Ricard, for a super-priority lien on the Debtors’

1 existing crops. The Debtors, given their current credit status are unable to obtain unsecured  
2 lending, or even locate any interested parties willing to lend the Debtors monies sufficient to  
3 pay the Expenses on terms as favorable as the proposed post-petition financing.

4 Post-petition financing is necessary for the continued operation of the Debtors' estates  
5 and the estates' successful reorganization. Furthermore, the creditors of the bankruptcy estate  
6 will benefit from the Court's approval of the post-petition lending, because the Debtors will be  
7 able to meet the Expenses, allowing the continued benefit of the use of the land and its' crops.

8 Bankruptcy Rule 4001(c) governs the procedures for obtaining authorization for  
9 postpetition financing and provides:

10 (c) Obtaining Credit

11 (1) Motion; Service. A motion for authority to obtain credit shall be made  
12 in accordance with Rule 9014 and shall be served on...if the case is a . . . chapter  
13 11 reorganization case and no committee of unsecured creditors has been  
14 appointed pursuant to § 1102, on the creditors included on the list filed pursuant  
15 to Rule 1007(d), and on such other entities as the court may direct. The motion  
16 shall be accompanied by a copy of the agreement.

17 (2) Hearing. The court may commence a final hearing on a motion for  
18 authority to obtain credit no earlier than 15 days after service of the motion. If  
19 the motion so requests, the court may conduct a hearing before such 15 day  
20 period expires, but the court may authorize the obtaining of credit only to the  
21 extent necessary to avoid immediate and irreparable harm to the estate pending a  
22 final hearing.

23 Debtor seeks entry of the Interim Order on an emergency basis and requests that the  
24 Court set a "final hearing" in accordance with Bankruptcy Rule 4001(c). Bankruptcy Rule  
25 4001(c) authorizes the Court to enter the Interim Order authorizing the Debtors' to obtain post-  
26 petition financing.

WHEREFORE the Debtors request the Court approve its Motion to obtain post-petition  
credit.

1 Respectfully submitted,

2 COLICINS, MAY, POTENZA, BARAN & GILLESPIE, P.C.

3 

4 By /s/ Daniel P. Collins

009055

5 Daniel P. Collins

6 Alysse M. Medina

7 Attorneys for Debtor-in-Possession,  
8 Texas Hill Enterprises, GP and Texas  
9 Hill Diamante Cooling, L.L.C.

1 Copy of the foregoing  
2 mailed this 16<sup>th</sup> day  
3 of April, 2010 to:

4 United States Trustee  
5 230 North First Avenue, Suite 204  
6 Phoenix, Arizona 85003-1706

7 Rabobank, N.A.  
8 c/o Michael Fox  
9 Special Assets Management, 95  
10 P.O. Box 6002  
11 Arroyo Grande, California 93420

12 Rabobank AgFinance  
13 c/o Ken Vandegraaff  
14 4445 E. Holmes Ave., Suite 105  
15 Mesa, Arizona 85206

16 Farm Credit Services Southwest  
17 c/o Ron Kinner, VP/Branch Manager  
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/s/ 